



State of Utah

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Generator Site Access Program

Response to comments regarding the
Generator Site Access (GSA) Permit Enforcement Policy

I. Background

During the month of January 2011, the State of Utah, Department of Environmental Quality (DEQ), Division of Radiation Control (DRC) revised the Generator Site Access Program (GSAP) Enforcement Policy. This Enforcement Policy went out for public comment on February 4, 2011. The public comment period closed March 4, 2011. The DRC placed a pdf version of the draft enforcement policy on the DRC web page and also sent out an email notification to all GSAP permittees prior to the public comment period. In addition, notification of the public comment period regarding the draft enforcement policy was sent out via EnergySolutions listserv. The information that follows summarizes the comments that were received, and DRC's response to the comments.

Discussion of Comments

EnergySolutions was the only entity to submit comments. In their letter dated March 4, 2011, (CD11-0063) seven specific comments were provided. EnergySolutions mentioned that they continue to support the DRC's GSAP program, however suggest revisions to the February 4, 2011, draft enforcement policy.

II. Specific comments brought up in response letter

1. Methodology for Calculation of Civil Penalties unclear with respect to GSA point system.

Comment indicates that it is unclear about the methodology for calculating civil penalties based on points. The assessment of civil penalties is based on the level of severity provided in Radiation Control Rule R313-14-15. However the methodology the DRC uses to calculate civil penalties versus the points assessed is not always consistent.

DRC's Response

The violations and points that are listed in the enforcement policy table are a listing of frequently cited or potential violations where points reflect degree of potential hazard. Generally, the GSAP point assessment correlates to severity levels, however, the points do not necessarily equate to civil penalty amounts. For instance as points escalate the higher the potential for severity level and the imposition of a civil penalty. Higher point values are based on the severity of the violation and/or violations. However, the assessment of a large amount of points does not necessarily mean a civil penalty will be assessed. The GSAP enforcement action is dependent on the circumstances of the case and may require that discretion be exercised after consideration of many factors such as systemic trends and incident severity. The GSA Enforcement Program has been designed to ensure that there is no deliberate profit from violations of the Utah Radiation Control rules.

2. Define "adequately" contained

Comment requested that we define the intent in evaluating how "adequately" will be enforced with respect to shipments containing non-regulated material.

DRC's Response

Shipments that are cited for "Failed package integrity and/or failure to contain waste material adequately (non-regulated material)", is referencing a receptacle or package that is intended to contain the material, that it does not leak or have a hole in it. Based on DRC's review of the comment, instead of trying to define the word adequately, it seems reasonable to simply remove the word from the citation. Therefore, the DRC will change the current verbiage from "Failed package integrity and/or failure to contain waste material adequately (non-regulated material)", to "Failed package integrity and/or failure to contain waste material (non-regulated material)".

3. Points for failure to register or to obtain the correct GSA permit

Comment recommends that we consider keeping the failure to register at 150 points and change the failure to obtain the correct permit to 75 points.

DRC's Response

The DRC concurs with the comment and will change the points for failure to obtain the correct GSA permit (processor versus generator permit) to "75" points and keep the failure to register as a shipper or generator at "150" points.

4. Failure to provide shipping papers for a shipment of hazardous materials

Comment suggests that the assessment of 500 points for misplaced or lost shipping papers is excessive.

DRC's Response

The DRC disagrees with the comment. The importance of having shipping papers during transportation can not be understated. CFR 177.817(e)(2)(i)(B) requires that a driver of a motor vehicle, and each carrier using such a vehicle, to ensure that the shipping paper accompanying the shipment is readily available to, and recognizable by, authorities in the event of accident or inspection. Specifically, when the driver is at the vehicles controls, the shipping paper must be within his immediate reach while he is restrained by the lap belt, and be readily visible to a person entering the driver's compartment or in a holder mounted to the inside of the door on the driver's side of the vehicle. Shipping papers are an essential part of the shipment and transportation process, providing critical communication to responders regarding potential hazards associated with the shipment, specific hazardous material information, and emergency response contact information.

5. Failure to include the words "Fissile Excepted"

Comment wanted clarification for failure to include the words "Fissile Excepted" on shipping papers, asking if this pertains to the proper shipping name or just the paper work.

DRC's Response

The statement, "Failure to include the words 'Fissile Excepted' for a package containing fissile Class 7 (radioactive) materials that is 'excepted' pertains to the paper work only, it is not required as part of the proper shipping name.

6. NRC Form 541 Information

Commenter's wanted clarification on how points will be assessed for incomplete or inaccurate information on the Nuclear Regulatory Commission Form 541. Points assessed will be similar to the list in the GSA Point Value Assessment Table. For example, 25 points could be assessed for each container that is not described on the Form 541 (disposal container and waste information), which is similar to failing to list the number and type of packages on the Form 540 (shipment information). Other non-compliant items would be assessed point values based on the significance of the violation.

7. Failed Bracing

Comment stated that "Failed bracing" should be better defined and referenced in 71 FR 35832, which cites the Federal Motor Carrier Safety Administration's minimum performance criteria for cargo securement devices and systems.

DRC's Response

The DRC disagree with this comment and its definition referenced in 71 FR35832, since it more directly applies to the cargo securement devices and systems, such as tie-down assemblies and load limits. "Failed bracing" is referenced in 49 CFR § 177.834 which states in part, "Packages secured in a motor vehicle, containing any hazardous material, not permanently attached to a motor vehicle, must be secured

against shifting, *including relative motion between packages, within the vehicle on which it is being transported.*” Also, Federal Register / Vol. 61, No. 109 / Wednesday, June 5, 1996 / Rules and Regulations define “secured” in § 174.55(a) with language requiring that a package containing a hazardous material must be loaded in the transport vehicle or freight container so that it cannot fall and must be safeguarded in such a manner that other freight cannot fall onto or slide into it. This is a performance standard which acknowledges that all packages in a vehicle or container may move to a limited degree during transportation without adversely affecting their structural and containment integrity. Furthermore, loads should be secured against shifting in cages, carts, bins, boxes or compartments.